

### **REMARKS**

In response to the Office Action mailed June 26, 2007, Applicant respectfully requests reconsideration. Claims 1-20 were last presented for examination. Claims 1-20 are rejected. By the foregoing Amendments, claims 1-20 have been cancelled and claims 21-30 have been added. No new matter has been added. Thus, upon entry of this paper, claims 21-30 will be pending in this application. Of these ten (10) claims, two (2) claims (claims 21 and 26) are independent.

Based upon the above Amendment and following Remarks, Applicant respectfully requests that all outstanding objections and rejections, be reconsidered, and that they be withdrawn.

#### ***Claim Rejections – 35 USC §112***

The Office Action rejects claims 1-20 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. (*See*, Office Action, pg. 2, ¶2.) Claims 1-20 have been cancelled and recast as new claims 21-25, above, thus overcoming the rejection or making this rejection moot. New claims 26-30 have also been written to avoid a similar rejection. Applicant respectfully requests that the rejection be reconsidered and withdrawn.

#### ***Claim Rejections – Double Patenting***

The Office Action provisionally rejected claims 1-6 and 10-14 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 and 10-17 of copending Application No. 10/520,759. The Office Action alleges that although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art as to the functional limitations of the jaw bone hole and osteoinductive material. Applicant respectfully disagrees for the following reasons.

Claims 1-20 of the instant application has been cancelled and recast as new claims 21-25 above. Furthermore, claims 1-17 of copending reference Application No. 10/520,759 were

cancelled and recast as new claims 18-30. Recast new claim 21 of the instant application is directed to:

An implant for fitting into a jaw bone hole having adjacent soft tissue and inner and outer hole parts with respective inner and outer hole diameters, comprising:

an inner implant part having an inner implant diameter;

an outer implant part having an outer implant diameter; and

at least one growth stimulating substance (GSS) disposed on a surface of said implant configured to interact with at least bodily fluid to form new bone,

wherein said inner implant diameter is configured to be greater than the inner hole diameter, whereby said implant is configured to be anchored to the jaw bone upon fitting said inner implant part into the inner hole part,

wherein said outer implant diameter is configured to be lesser than the outer hole diameter, **whereby a space is defined by** at least the jaw bone surface of the outer hole part, said outer implant part and **the soft tissue configured to cover said outer implant part**,

and further wherein said hole configured to receive bodily fluids via the jaw bone and GSS from said implant.

(See, independent claim 21, above; emphasis added.)

Meanwhile, recast new claim 18 of reference Application No. 10/520,759 is directed to:

An implant for implantation into a hole of a recipient's bone comprising:

at least one outer surface having a first cross-section diameter configured to be at least approximately equal to the cross-section diameter of the bone hole;

at least one inner surface having a second cross-section diameter configured to be smaller than both the cross-section diameter of the hole and said first cross-section diameter, wherein **a space is defined between said outer surface, said inner surface and the recipient's bone**; and

at least one growth stimulating substance (GSS) retained on said implant.

(See, Application No. 10/520,759, independent claim 18; emphasis added.)

The recast claims of the instant and reference applications clearly are directed to two distinct structures for defining a space. In the instant application, the claim recites defining a space with "soft tissue configured to cover said outer implant part", while the reference application uses two implant surfaces and the recipient's bone. Therefore, the features of the instant application would not have been obvious to one of ordinary skill in the art as to the functional limitations of the jaw bone hole and osteoinductive material based on the reference

application. Accordingly, Applicant respectfully requests that the rejection be reconsidered and that it be withdrawn.

***Claim Rejections – 35 USC §102(b)***

The Office Action rejects claims 1-12 and 14-20 under 35 USC §102(b), as being anticipated by U.S. Patent No. 6,214,049 to Gayer, *et al.* (“Gayer”). Claims 1-20 have been cancelled making this rejection moot. Furthermore, Applicant asserts that Gayer does not anticipate new claims 21-25 for the following reasons.

In explaining the rejection of now-cancelled claims 1-12 and 14-20, the Office Action did not address the feature of “the ***implant... anchored or fitted in the hole*** via its inner parts and, with its outer parts extends into a part of the hole which has a cross-sectional area (d’) exceeding the cross-sectional area (D’) of the outer parts of the implant” (emphasis added). Instead, the Office Action alleges that various other features claimed in the application, but not an implant anchored by an inner part, are taught or suggested by Gayer. (*See*, Office Action, pg. 3, ¶6.) Gayer does not teach or disclose the implant being “***anchored or fitted in the hole*** via its inner parts and, with its outer parts extends into a part of the hole which has a cross-sectional area (d’) exceeding the cross-sectional area (D’) of the outer parts of the implant.” Furthermore, although claims 1-12 and 14-20 are presently cancelled, new independent claim 21 recites, “wherein said inner implant diameter is configured to be greater than the inner hole diameter, ***whereby said implant is configured to be anchored to the jaw bone upon fitting said inner implant part into the inner hole part***” which Gayer also does not teach or suggest. (*See*, independent claim 21, above; emphasis added.)

Also, the Office Action states that Gayer teaches a space formed between the implant surface and the hole wall, at column 12 line 50 of Gayer. (*See*, Office Action, pg. 3, ¶6.) Applicant’s independent claim 21 recites, “whereby a ***space is defined by*** at least the ***jaw bone surface*** of the outer hole part, said ***outer implant part*** and the ***soft tissue configured to cover said outer implant part***.” (*See*, independent claim 21, above; emphasis added.) On the other hand, the Office Action refers to the portion of Gayer which states, “In the case of a dental implant, the cavity 1002 may represent the space created by avulsion of the natural tooth

previously occupying that space. In other applications, the cavity 1002 may be created by the removal of either damaged or healthy bone in order to provide an receptor site for an implant device.” (See, Gayer, col. 12, ll. 48-54.) Clearly, Gayer is describing a hole into which a dental implant may be inserted, which it is saying may be created by tooth extraction or by drilling or other bone removal method. Contrarily, Applicant’s independent claim is directed to anchoring the implant to the jaw bone by the implant’s inner part and forming a space defined by the jaw bone surface, the implant’s outer part and soft tissue which is configured to cover the implant’s outer part. Therefore, Gayer does not teach or suggest every element or feature of Applicant’s claims, as presently presented. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

***Claim Rejections – 35 USC §103(a)***

The Office Action rejects claim 13 under 35 USC §103(a), as being unpatentable over U.S. Patent No. 6,214,049 to Gayer, *et al.* (“Gayer”). Claim 13 has been cancelled making this rejection moot. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

***Dependent Claims***

The dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter, which makes them *a fortiori* independently patentable over the art of record. Accordingly, Applicant respectfully requests that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

Application No. 10/521,743  
Amendment dated October 18, 2007  
Reply to Office Action of June 26, 2007

Docket No.: 21547-00302-US1

***Conclusion***

In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.

Please charge to our Deposit Account No. 22-0185, under Order No. 21547-00302-US1 a one month extension fee from which the undersigned is authorized to draw.

Dated: October 18, 2007

Respectfully submitted,

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